

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

KIRK D. ROBINSON,

Petitioner,

v.

TAGGART BOYD, Warden of RTC; and
ROB JEFFREYS, Director of Corrections,
Nebraska;

Respondents.

8:22CV412

**MEMORANDUM
AND ORDER**

This closed federal habeas matter has been reassigned to the undersigned for disposition of Petitioner Kirk D. Robinson's Notice of Appeal ([Filing No. 53](#)), filed in this Court on November 17, 2023, as well as a Motion for Certificate of Appealability ([Filing No. 58](#)), initially filed by Petitioner in the Eighth Circuit Court of Appeals on November 13, 2023, and which the Eighth Circuit construed as a notice of appeal and forwarded to this Court (*see* [Filing No. 58-1](#)). Petitioner appeals from the Court's Memorandum and Order and Judgment dated November 3, 2023 ([Filing Nos. 48](#) and [49](#).)

With his Notice of Appeal, Petitioner filed a Motion for Leave to Appeal in Forma Pauperis ("IFP") in which he requests to proceed IFP on appeal and "apologizes for not providing the proper documentation but is unable to obtain the monthly account statements needed by the Court." ([Filing No. 54](#).) The Court has requested and received a certified copy of Petitioner's trust account statement ([Filing No. 56](#); [Filing No. 60](#).) However, the Court cannot properly rule on Petitioner's request to proceed IFP as his request does not comply with the terms of 28 U.S.C. § 1915, the statute authorizing proceedings in forma pauperis. *See* 28 U.S.C. § 1915(a)(1) (requiring a party seeking to proceed IFP on appeal to submit "an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor"). Petitioner has not

previously been granted leave to proceed IFP in the district court in connection with his § 2254 petition. Thus, Fed. R. App. P. 24(a)(3), which continues in forma pauperis status on appeal without further authorization, does not apply. Within 30 days, Petitioner must either submit the \$505.00 filing and docket fees¹ to the Clerk's office or submit a request to proceed in forma pauperis that complies with 28 U.S.C. § 1915. Petitioner's appeal cannot be processed until either the appellate filing fee is paid or the question of Petitioner's authorization to proceed on appeal in forma pauperis is resolved.

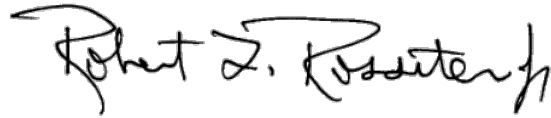
IT IS THEREFORE ORDERED that:

1. Petitioner's Motion for Leave to Appeal IFP ([Filing No. 54](#)), is denied without prejudice to reassertion in a motion that complies with 28 U.S.C. § 1915(a).
2. Petitioner is directed to submit the \$505.00 fee to the Clerk's office or submit a request to proceed in forma pauperis within 30 days.
3. The Clerk of the Court is directed to send to Petitioner the Form AO240 ("Application to Proceed Without Prepayment of Fees and Affidavit").
4. The Clerk of the Court is directed to set a pro se case management deadline in this matter with the following text: **January 4, 2024**: Check for MIFP or payment.
5. The Court will reserve ruling on Petitioner's Motion to Appoint Counsel for Appeal ([Filing No. 55](#)), and Motion for Certificate of Appealability ([Filing No. 58](#)), until after Petitioner responds to this Memorandum and Order.

¹On December 1, 2023, the appellate filing and docket fees increased to \$605.00. Petitioner filed his notice of appeal prior to the effective date of the increase so the \$505.00 appellate filing and docket fee applicable to appeals filed prior to December 1, 2023 applies here.

Dated this 5th day of December 2023.

BY THE COURT:

A handwritten signature in black ink, reading "Robert F. Rossiter, Jr." with a stylized flourish at the end.

Robert F. Rossiter, Jr.
Chief United States District Judge